

Message Text

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PAGE 01 GENEVA 01653 01 OF 02 071315Z

ACTION EB-08

INFO OCT-01 EA-07 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 SS-15 STR-04
ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00 OMB-01
AF-08 ARA-06 EUR-12 NEA-10 OIC-02 /132 W
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R 071056Z MAR 77

FM USMISSION GENEVA

TO SECSTATE WASHDC 5702

INFO ALL EC CAPITALS 182

AMEMBASSY CANBERRA

LIMITED OFFICIAL USE SECTION 1 OF 2 GENEVA 1653

PASS STR AND AGRICULTURE ELECTRONICALLY

E.O. 11652: N/A

TAGS: ETRD, GATT, EAGR, EEC

SUBJ: GATT PANEL ON EC MIP AND LICENSING FOR PROCESSED
FRUITS AND VEGETABLES, MARCH 3, 1977

REF: GENEVA 1449

1. SUMMARY. GATT PANEL ON EC MINIMUM IMPORT PRICE AND
LICENSING SYSTEM FOR PROCESSED FRUITS AND VEGETABLES HAD
ITS SECOND AND PRESUMABLY LAST MEETING WITH THE PARTIES
MARCH 3 TO RECEIVE FURTHER CLARIFICATION AND ELABORATION
OF U.S. AND EC POSITIONS. COMMUNITY MADE A STATEMENT IN
ITS DEFENSE WHICH DID NOT GO MUCH BEYOND POINTS ALREADY
MADE AT LAST MEETING FEBRUARY 11. PANEL QUESTIONS
TO THE EC HAD TO DO PRIMARILY WITH THE OPERATION OF THE
MIP SYSTEM FOR TOMATO CONCENTRATES. GATT PANEL WAS
INTERESTED IN FURTHER ELABORATION OF OUR LEGAL POSITION
THAT THE EC SYSTEM VIOLATED GATT ARTICLES I, II, VIII,
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PAGE 02 GENEVA 01653 01 OF 02 071315Z

AND XI. THE PANEL PLANS TO MAKE ITS FINAL DETERMINATION
ON THE MATTER BEFORE THE END OF MARCH AND MAY REQUEST
ADDITIONAL INFORMATION IN THE INTERIM FROM ONE OR BOTH
PARTICIPANTS. END SUMMARY.

2. U.S. DELEGATION LED BY STARKEY (STR) MADE PRESENTATION
REFUTING SPECIFIC POINTS MADE BY EC AT FEBRUARY 11 PANEL

MEETING ALONG LINES OF CLEARED STATEMENT HANDCARRIED BY
U.S. DEL.

3. THE COMMUNITY STATEMENT MADE FEW ADDITIONAL POINTS BEYOND ITS DEFENSE PRESENTED FEBRUARY 11. THE EC DELEGATION (LED BY MARMULLA) CONTENDED THAT ARTICLES II AND XI WERE MUTUALLY EXCLUSIVE; NAMELY, THE DEPOSIT REQUIREMENT COULD NOT VIOLATE BOTH ARTICLES SINCE ARTICLE II DEALT WITH ADDITIONAL DUTIES AND ARTICLE XI WITH QUANTITATIVE RESTRICTIONS. THE EC MIP SYSTEM ON TOMATO CONCENTRATES COULD THEREFORE ONLY BE EXAMINED IN LIGHT OF ARTICLE XI AND WAS CONSISTENT UNDER SUBPARAGRAPH 2CI AND II. THE LICENSING/DEPOSIT SCHEME FOR OTHER PRODUCTS WAS CONSISTENT WITH ARTICLE VIII AND NECESSARY TO ASSURE THAT IMPORTERS WOULD RESPECT THEIR CONTRACTUAL OBLIGATIONS.

4. THE GATT PANEL SPENT A LONG TIME QUESTIONING THE EC ON ITS MIP SYSTEM, IN PARTICULAR AS TO WHETHER DEPOSIT FORFEITURE CONSTITUTED THE ONLY SANCTION FOR GUARANTEEING THE MIP, WHETHER A PRODUCT COULD BE IMPORTED EVEN THOUGH ITS CIF PRICE DUTY-PAID PLUS DEPOSIT FELL BELOW THE MIP AND HAD THERE BEEN INSTANCES OF DEPOSIT FORFEITURES ON THE MIP. THE EC ANSWERED THE FIRST TWO POINTS IN THE AFFIRMATIVE AND SAID THAT SINCE SEPTEMBER 1, 1975, DEPOSIT FORFEITURES HAD OCCURRED IN 17 INDIVIDUAL CASES INVOLVING FIVE COUNTRIES AND A TOTAL 260 MT OF TOMATO CONCENTRATE. IN FURTHER COMMENTS, MARMULLA STATED HE DID NOT BELIEVE THAT IMPORTS WITH LIMITED OFFICIAL USE

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PAGE 03 GENEVA 01653 01 OF 02 071315Z

DEPOSIT FORFEITED WERE EVER PRICED BELOW THE MIP SINCE THE DEPOSIT WAS FIXED AT SUCH A LEVEL AS TO MAKE IT DISADVANTAGEOUS TO UNDERCUT THE MIP.

5. THE GATT PANEL ASKED THE EC TO EXPLAIN HOW THE EC SYSTEM ACTED TO CONTROL THE PRODUCTION AND MARKETING OF TOMATO CONCENTRATE. THE EC EXPLAINED ITS INTERVENTION SYSTEM OF MARKET WITHDRAWALS FOR FRESH TOMATOES AND ITS EFFECT ON TOMATO SUPPLIES TO THE EC TOMATO CONCENTRATE INDUSTRY. A PANEL MEMBER (SEGALLA) QUESTIONED WHETHER ABSENCE OF THE EC INTERVENTION SCHEME WOULD ENCOURAGE OR DISCOURAGE EC TOMATO PRODUCTION. MARMULLA ADMITTED THAT WITHOUT THE MINIMUM SUPPORT AFFORDED BY INTERVENTION PRICE THERE WOULD BE GREATER RISKS TO PRODUCERS.

6. IN RESPONSE TO NUMEROUS PANEL REQUESTS FOR INFORMATION ON THE RELATIONSHIP BETWEEN EC PRODUCER PRICES, INTERVENTION PRICES, WORLD OFFER PRICES, AND THE FIXING OF THE MIP, MARMULLA SAID THE EC WOULD SUBMIT ADDITIONAL

DATA NEXT WEEK. HOWEVER, MARMULLA ADMITTED THAT THERE WAS NO DIRECT RELATIONSHIP BETWEEN THE MIP AND THE INTERVENTION PRICE.

7. THE PANEL WAS INTERESTED IN HOW MANY COUNTRIES HAD ENTERED IN AN ARRANGEMENT WITH THE EC TO GUARANTEE THE MIP. THE EC HAS NOT SIGNED ANY SUCH AGREEMENTS YET BUT EXPLAINED (FEEBLY) WITH RESPECT TO OTHER PRODUCTS THAT EC HAD NOT FOUND IT NECESSARY TO RUN DOWN ANY OFFERS TO DATE BY SUPPLYING COUNTRIES TO GURAAANTEE OBSERVANCE OF MIP'S.

8. THE EC DECLARED THAT LICENSES ONCE ISSUED WERE EXEMPT FROM SAFEGUARD ACTION BUT WAS UNABLE TO INDICATE WHERE THIS GUARANTEE WAS PROVIDED IN THE REGULATIONS. IN ADDITION, THE EC COULD NOT ANSWER A PANEL MEMBER (EGGERT) AS TO WHETHER GOODS UNDER LICENSE WOULD BE IMMUNE FROM SAFEGARUD RESTRICTIONS IN THE FORM OF HIGHER DUTIES OR LIMITED OFFICIAL USE

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PAGE 04 GENEVA 01653 01 OF 02 071315Z

OTHER CHARGES (AS OPPOSED TO QR'S).

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PAGE 01 GENEVA 01653 02 OF 02 071325Z

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INFO ALL EC CAPITALS 183
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LIMITED OFFICIAL USE SECTION 2 OF 2 GENEVA 1653

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9. U.S. RESPONDED TO PANEL QUESTIONS REF B AS FOLLOWS:
THE EC LICENSING AND SURETY DEPOSIT SYSTEM CLEARLY WORKS
TO RESTRICT TRADE IN VIOLATION OF ARTICLE XI. WHEN THE
DEPOSIT IS FORFEITED AND IMPORTATION DOES NOT TAKE
PLACE THE SUBSEQUENT ADDITIONAL CHARGE CONSTITUTES A
PENALTY FOR NOT IMPORTING AND IS IN VIOLATION OF
ARTICLE VII SUBPARAGRAPH A. WHEN THE PRODUCT IS IM-
PORTED UNDER A NEW LICENSE WITH A NEW SURETY, THERE
ARE IN EFFECT TWO ADDITIONAL CHARGES: THE FORFEITED
SURETY AND CONCOMITTANT ADMINISTRATIVE EXPENSES AND
THE COST OF THE NEW SURETY WITH CONCOMITTANT ADMINISTRA-
TIVE EXPENSES. TO ILLUSTRATE THIS POINT, U.S. CITED
EXAMPLE OF GERMAN IMPORTER WHO FORFEITED SURETY DEPOSIT
ON 7680 CASES OF GREEN BEANS FROM WISCONSIN AND HAD
TO APPLY FOR ADDITIONAL LICENSE WITH ADDITIONAL DEPOSIT
REQUIREMENT IN ORDER TO IMPORT THE MERCHANDISE. IN
CASE OF A PRODUCT SUBJECT TO THE MIP, THE PRODUCT IS
IMPORTED UNDER THE SAME LICENSE AFTER SURETY IS FOR-
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PAGE 02 GENEVA 01653 02 OF 02 071325Z

FEITED. HOWEVER, THE FORFEITURE MAY BE MORE THAN
THE DIFFERENCE BETWEEN THE ENTRY PRICE AND THE MIP.

10. THE MIP AND LICENSING REQUIREMENTS ARE NEW CON-
DITIONS UNANTICIPATED NOR PROVIDED ON THE GATT BINDINGS
RECEIVED BY THE U.S. IN 1962 AND ARE THEREFORE INCON-
SISTENT WITH ARTICLE II WHICH PROHIBITS INTER ALIA IMPORT
CHARGES OF ANY KIND IMPOSED ABOVE THE BOUND RATE.

11. IN GENERAL, ARTICLE VIII EXHORTS THE CONTRACTING
PARTIES TO REDUCE IMPORT AND EXPORT FORMALITIES. THERE
IS INHERENT IN THE ARTICLE A DUTY NOT TO INCREASE SUCH
ADMINISTRATIVE BURDENS WHICH ACT TO RESTRICT TRADE.

12. IN ADDITION TO THE QUESTIONS TO THE ABOVE QUESTIONS,
GATT PANEL MEMBER (YOSHIKUNI) ASKED WHETHER THE LIMITED
DEFINITION OF "PERISHABLE PRODUCTS" AT THE TIME OF THE
HAVANA CHARTER STILL APPLIED UNDER PRESENT CIRCUMSTANCES
AND WHETHER AN IMPORT MEASURE COULD BE CONSISTENT
WITH ARTICLE XI WHILE INCONSISTENT WITH ARTICLE II. THE
U.S. EXPLAINED THAT PROCESSED FOODS WERE ALREADY AN
IMPORTANT ELEMENT IN WORLD TRADE AT THE TIME OF AND WELL
BEFORE THE HAVANA CHARTER AND THAT THE CONTRACTING
PARTIES AT THAT TIME HAD DELIBERATELY INTENDED TO LIMIT
THE EXEMPTION AFFORDED BY ARTICLE XI:2(C)(I) AND (II) TO
PERISHABLE PRODUCTS NARROWLY DEFINED. U.S. DEL POINTED
OUT THAT AN IMPORT MEASURE WHICH COULD QUALIFY FOR THE
EXEMPTIONS ALLOWED UNDER ARTICLE XI AND STILL NULLIFY
AND IMPAIR RIGHTS ACCRUING UNDER ARTICLE II. HOWEVER,

THE U.S. EMPHASIZED THAT IN THE PARTICULAR INSTANCE UNDER INVESTIGATION THE EC MIP SYSTEM IN NO WAY CONSTITUTED AN ALLOWABLE EXCEPTION UNDER ARTICLE XI AND THEREFORE WAS BOTH INCONSISTENT WITH THAT ARTICLE AND ARTICLE II. MOREOVER, THE U.S. POINTED OUT THAT IF THE PANEL WERE TO DETERMINE THAT THE MIP ON TOMATO CONCENTRATE WERE CONSISTENT WITH ARTICLE XI:2(C)(I) AND (II) LIMITED OFFICIAL USE

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PAGE 03 GENEVA 01653 02 OF 02 071325Z

THIS WOULD SANCTION THE EC APPLICATION OF MIP'S TO OTHER PROCESSED FRUITS AND VEGETABLES WERE MARKET WITHDRAWALS SYSTEM, SIMILAR TO FRESH TOMATOES, WERE IN EFFECT: FOR EXAMPLE, CANNED MANDARIN ORANGES, CITRUS JUICES, APPLE JUICE AND CANNED PEACHES.

12. IN THEIR CONCLUDING REMARKS, THE COMMUNITY MADE ONE LAST EFFORT TO DEFEND TOMATO CONCENTRATES AS A PERISHABLE PRODUCT. TOMATO CONCENTRATE, MARMULLA SAID, WAS A PERISHABLE PRODUCT EVEN THOUGH ITS SHELF LIFE WAS LONGER THAN FRESH TOMATOES. THE EC SAID THAT SHOULD THE PANEL FIND THE EC SYSTEM INCONSISTENT WITH GATT OBLIGATIONS, THE EC WILL BE FORCED TO RE-EVALUATE ITS POLICY OF CONSOLIDATION AND LIBERALIZATION IN THIS SECTOR.

13. THE CHAIRMAN OF THE PANEL (JAGMETTI) REAFFIRMED HIS EARLIER POSITION THAT THE PANEL SHOULD RENDER ITS FINAL DETERMINATION ON THIS CASE BEFORE THE END OF MARCH. HE SAID THAT THE PANEL IN ITS DETERMINATION MIGHT CALL ON BOTH DELEGATIONS FOR FURTHER INFORMATION AND COMMENTS IF NECESSARY. CATTO

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Message Attributes

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Disposition Approved on Date:
Disposition Case Number: n/a
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